

1979 S.C. Op. Atty. Gen. 76 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-58, 1979 WL 29064

Office of the Attorney General

State of South Carolina

Opinion No. 79-58

March 26, 1979

*1 Drug Product Selection Act of 1978 (Act No. 595) does not apply to institutional dispensing of drugs in hospitals and nursing homes.

Board of Pharmaceutical Examiners

QUESTIONS

Does the Drug Product Selection Act of 1978 (Act No. 595 of 1978) apply to institutional dispensing of drugs in hospitals and nursing homes?

STATUTES AND CASES

A. Statutes:

1. Act No. 595, 1978 Acts and Joint Resolutions of the General Assembly of the State of South Carolina, 1744.

B. Cases:

1. [Brewer v. Brewer](#), 242 S.C. 9, 129 S.E.2d 736 (1963).
2. [Caughman v. Columbia Y.M.C.A.](#), 212 S.C. 337, 47 S.E.2d 788 (1948).
3. [City of Spartanburg v. Leonard](#), 180 S.C. 491, 186 S.E. 395 (1936).
4. [Laird v. Nationwide Insurance Company](#), 243 S.C. 388, 134 S.E.2d 206 (1964).
5. [Peoples National Bank of Greenville v. South Carolina Tax Commission](#), 250 S.C. 187, 156 S.E.2d 769 (1967).
6. [State ex rel McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964).

C. Miscellaneous:

1. Board of Pharmaceutical Examiners [Regulation R 99-2](#), Code of Laws of South Carolina, 1976.
2. Department of Health and Environmental Control Regulation R 61-4, § 101(u), Code of Laws of South Carolina, 1976.

DISCUSSION:

Act No. 595 of 1978 provides that, upon receiving a prescription for a brand name product and with proper authorization from the prescribing practitioner and the patient, a pharmacist may substitute an equivalent drug product for the brand name product.

Section 4 of the Act provides that '[e]very oral or written prescription shall provide an authorization from the practitioner as to whether or not a therapeutically equivalent drug may be substituted.' The question presented is whether orders by medical practitioners given in a hospital or nursing home for drugs which are to be administered to a patient while he is being treated in the facility must conform to the requirements of this Act. Since the Act applies to 'every oral or written prescription', the question to be resolved is whether these 'chart orders' for drugs are included in the term 'prescription' as used in the Act.

'Prescription' is not defined by the Act. Neither has it been defined in any decision of our Supreme Court. Prior treatment of the term in agency regulations provides an ambiguous answer to the inquiry. The term is defined in different ways depending upon the context in which it is used. For example, in Department of Health and Environmental Control Regulation R 61-4, § 101(u), Code of Laws of South Carolina, 1976, which deals with controlled substances, the definition specifically excludes an order to dispense a drug to a bed patient for immediate administration in a hospital. On the other hand, the Board of Pharmaceutical Examiners Regulation R 99-2, Code of Laws of South Carolina, 1976, provides a definition of prescription which may be broad enough to include chart orders for drugs. How the term is used in Act No. 595 is a question of statutory construction.

*2 All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used in the statute. Furthermore, the language used in the statute must be interpreted in light of the intended purpose of the statute. Peoples National Bank of Greenville v. South Carolina Tax Commission, 250 S.C. 187, 156 S.E.2d 769 (1967); State ex rel. McLeod v. Montgomery, 244 S.E. 308, 136, S.E.2d 778 (1964).

The South Carolina Supreme Court has recognized that one method of determining legislative intent is by reference to the preamble of the Act. City of Spartanburg v. Leonard, 180 S.C. 491, 186 S.E. 395 (1936). One stated purpose of Act No. 595 is to allow the citizens of South Carolina to obtain drug products at the most reasonable cost consistent with high drug quality standards. To effectuate this policy, the Act allows the substitution of an equivalent drug for a brand name drug where the prescribing practitioner authorizes the substitution and the buyer consents to it. Interpreting 'prescription' in light of this intended purpose leads to the conclusion that 'chart orders' were not intended to be included within the term. Section 4 of the Act requires in mandatory language that no substitution shall take place 'unless the pharmacist advises the patient that the practitioner has authorized substitution and the patient consents.' In the hospital setting, compliance with this requirement will add two steps to the drug ordering process historically employed in institutional settings. First, the pharmacist must communicate with a patient who is not present at the time the order is filled. Secondly, the patient must then answer the pharmacist's inquiry. This would necessitate a time delay, filling out additional forms and additional paper work, resulting in additional cost to the patient for his hospital stay. Such a result is directly contrary to the intent of the legislature.

Statutes must be construed as a whole. See Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Looking at the entire Act and again to the language used, it is apparent that the Legislature contemplated a face-to-face buyer consent to substitution. The pharmacist must inform the buyer that the practitioner has authorized substitution. The buyer must then consent to the substitution before the pharmacist is permitted to substitute another equivalent drug. Furthermore, Section 4 of the Act describes a written prescription as a single form. This comports with the type prescription commonly obtained by patients and taken by them to a pharmacy. On the other hand, 'chart orders' are noted on a hospital patient's medical records pursuant to a physician's direction and later ordered on a form prepared by a hospital staff member.

One of the primary rules utilized in construing a statute is that the words used therein should be taken in their ordinary and popular significance, unless there is something in the statute requiring a different interpretation. Laird v. Nationwide Insurance Company, 243 S.C. 388, 134 S.E.2d 206 (1964). The reason for this rule is that 'it must be supposed that the legislature, in enacting a statute, intended that the words used therein should be understood in the sense in which they are ordinarily and popularly understood by the people, for whose guidance and government the law was enacted. . . .' Brewer v. Brewer, 242 S.C. 9, at 14, 129 S.E.2d 736, at 738 (1963). A 'prescription' for drugs ordinarily is used to refer to an order by a physician to a pharmacist to dispense certain specified drugs to the patient named in the prescription who will then administer the drugs to himself. The prescription is customarily issued directly to the patient, who then has it filled by a pharmacy chosen by him. Orders for drugs in a hospital are usually referred to as 'chart orders'. In the institutional setting, the drugs are administered

solely by the staff. The patient is not given a prescription as the term is commonly understood but rather the staff is directed to administer certain drugs to the patient. Neither the drug order nor the drugs themselves are ever in the possession of the patient.

*3 In light of the historical differences between prescriptions and chart orders and in light of the fact that the application of Act 595 of 1978 in an institutional setting would likely increase costs to the patients in contravention of the stated purpose of Act 595, it appears that chart orders directing staff members to administer drugs to in-patients in hospitals and other such institutions are not 'prescriptions' under the Act.

CONCLUSION:

Interpreting Act No. 595 of 1978 in light of the purpose of the Legislature, the situation contemplated by the Legislature and the ordinary meaning of 'prescription' points to the conclusion that institutional orders for drugs which are to be administered by staff members to in-patients are not subject to the requirements of the Act.

M. Richbourg Roberson
Assistant Attorney General

1979 S.C. Op. Atty. Gen. 76 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-58, 1979 WL 29064

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.